IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 1380 of 2005(L)

CC.55/2002 of ADDL.C.J.M.(E&O),ERNAKULAM
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PETITIONER:

K.M.ABDUL AZIZ, S/O.MUHAMMED KUNHI,
AGED 44 YEARS, RESIDING AT KAZHI LANE P.O.,
THALANGARA, KASARGOD DISTRICT.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS:
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1. ENFORCEMENT OFFICER,
ENFORCEMENT DIRECTORATE,
GOVERNMENT OF INDIA, CALICUT.

2. ASSISTANT DIRECTOR,
ENFORCEMENT DIRECTORATE,
GOVERNMENT OF INDIA, CALICUT.

BY ADV. SRI.P.PARAMESWARAN NAIR, ASST. SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 1380/05)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE ORDER DATED 5.8.1997.

EXT.P2: TRUE COPY OF THE MEMORANDUM OF APPEAL BEFORE THE APPELLATE TRIBUNAL DATED 20.11.1997.

EXT.P3: TRUE COPY OF THE JUDGMENT IN O.P.NO.31896/02.

EXT.P4: TRUE COPY OF THE RECEIPT DATED 19.12.2002 EVIDENCING PAYMENT OF MONEY AS PER EXT.P3.

EXT.P5: TRUE COPY OF THE NOTICE DATED 3.1.03 SERVED ON THE PETITIONER.

EXT.P6: TRUE COPY OF THE WRITTEN SUBMISSION DATED 30.1.2003.

EXT.P7: TRUE COPY OF THE COMPLAINT AS CC NO.55/02 DT. 4.4.2002.

EXT.P8: TRUE COPY OF THE ORDER DATED 12.1.2004 PASSED BY THE APPELLATE AUTHORITY.

EXT.P9: TRUE COPY OF THE JUDGMENT DATED 8.10.2004 IN WPC 29741/03 OF THIS HONOURABLE COURT.

EXT.P10: TRUE COPY OF THE REVIEW PETITION IN APPEAL NO.438/1997 DATED 16.11.2004.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.1380 of 2005

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Dated: 27th July, 2007

JUDGMENT

This Writ Petition under Article 227 of the Constitution has been filed by the petitioner who is accused in Ext.P7 complaint before the Additional Chief Judicial Magistrate(Economic Offence), Ernakulam for quashing the complaint on the ground that the complaint was instituted by the first respondent as if, against the adjudication, no appeal had been preferred by the petitioner before the Appellate Tribunal, Foreign Exchange.

2. Heard both sides.

3. Mr.Suresh Kumar Kodoth, learned counsel for the petitioner would submit that it was on a basically wrong premise that Ext.P7 complaint was filed by the respondent. As a matter of fact appeal was preferred and the appeal was dismissed subsequently. But against the order dismissing the appeal, a Review Petition has been filed before the Tribunal and the same is pending. Learned counsel invited my attention to Ext.P3 judgment of this court in O.P.No.31896/02 which was instituted by the petitioner when revenue recovery proceedings were initiated against him for recovering the penalty in respect of which Ext.P7 complaint was filed. Counsel submits that

pursuant to the judgment in Ext.P3 roughtly Rs.25,000/- has been paid and the balance amount payable is only Rs.55,000/-. Counsel further submits that Ext.P7 complaint cannot be maintainable since the same was initiated on the assumption that Ext.P1 order has attained finality and without considering the remittances already made.

4. The Assistant Solicitor General would submit that Ext.P7 complaint and the revenue recovery proceedings initiated for recovering the amount are different proceedings. At the time when Ext.P7 complaint was filed, the same was maintainable since the part payment was made only pursuant to Ext.P3 judgment which was during the pendency of the complaint.

5. I am unable to accept the submission of Mr.Suresh Kumar Kodoth that because on account of the subsequent event of the petitioner paying one-third of the amount, Ext.P7 has come to be not maintainable. At the same time, I am of the view that time should be given to the petitioner to wait for the result of the Review Petition stated to be pending before the Tribunal and if necessary to raise the balance amount. Under these circumstances, I dispose of the Writ Petition in the following terms:

It is open to the petitioner to expedite the consideration and final disposal of the Review Petition before the Tribunal (if the same is even now pending) and obtain orders on the same. The order of stay presently passed will continue for another nine months from today. If the Review Petition is unsuccessful, the petitioner will raise money and pay off all the entire balance penalty to the respondents within the above mentioned time frame. Once the entire balance penalty amount is paid, the respondents will consider a request by the petitioner for withdrawal of the complaint with utmost sympathy and move the learned Magistrate with appropriate application in that regard.

srd **PIUS C.KURIAKOSE, JUDGE**